

consumer seeking Plaintiff's products or service rather brought those consumers to Defendant's [www.cerakoteguncoatings.com](http://www.cerakoteguncoatings.com) website.

26. Defendant's advertising was commercial and promotional.

27. Defendant's advertising misrepresented to consumers that they could buy Plaintiff's goods or services on Defendant's website. Defendant's advertising actually deceived or had the tendency to deceive a substantial segment of its audience. Defendant's deception is material in that it is likely to influence the purchasing decision of consumers who view the advertising or are told about the advertising.

28. Plaintiff has been or is likely to be damaged by these acts as a result of the foregoing either by a direct diversion of sales to Defendant or by a lessening of Plaintiff's good will.

29. Due to the intentional nature of Defendant's acts, this is an exceptional case in which Plaintiff is entitled to treble damages, attorney's fees and costs pursuant to Section 35(a) of the Lanham Act, 15 U.S.C. Section 1117(a).

30. By reason of the foregoing acts of Defendant, Plaintiff has sustained substantial injury and damage and, unless enjoined, will continue to sustain substantial injury and damage. Defendant has unlawfully and wrongfully derived income and profits and has been unjustly enriched as a result of the foregoing acts.

31. Plaintiff has no adequate remedy at law to compensate fully for the damage Defendant's actions have caused and will cause until Defendant is stopped.

32. Among its other remedies, Plaintiff is entitled to corrective advertising to lessen the damage to Plaintiff.

### **Count Three**

(Federal Counterfeiting under Section 32(1)(a) of the Lanham Act)

33. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 32 above.

34. Defendant's unauthorized reproduction, counterfeit, copy, or colorable imitation of Plaintiff's DURACOAT mark in connection with the sale, offering for sale, distribution or advertising of coatings in the nature of firearms finishes is likely to cause public confusion, or to cause mistake, or to deceive.

35. Defendant's unauthorized reproduction, counterfeit, copy, or colorable imitation of Plaintiff's DURACOAT mark and applying such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause public confusion, or to cause mistake, or to deceive.

36. The foregoing acts of Defendant constitute infringement and counterfeiting in violation of Section 32(1)(a) of the Lanham Act, 15 U.S.C. Section 1114(1)(a).

37. Defendant's acts are willful and intentional.

38. Due to the intentional nature of Defendant's acts, this is a case in which Plaintiff is entitled to treble damages, attorney's fees and costs pursuant to Section 35(b) of the Lanham Act, 15 U.S.C. 1117(b).

39. Plaintiff may also elect, at any time before final judgment and is entitled to recover an award of statutory damages pursuant to 15 U.S.C. 1117(c).

40. By reason of the foregoing acts of Defendant, Plaintiff has sustained, and unless enjoined will continue to sustain, substantial injury and damage. Defendant has wrongfully derived profits and has been unjustly enriched as a result of the foregoing acts.